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OFFICE OF PETITIONS

In re Application of :
W. James Scheuermann :
Application No. 10/092,859 : **DECISION ON PETITION**
Filed: March 6, 2002 :
Attorney Docket No. QSTH-06000 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 15, 2007, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is not a final agency action within the meaning of 5 U.S.C. § 704.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed August 19, 2005, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on November 22, 2005 (November 19, 2005, the due date, is a Saturday). A Notice of Abandonment was mailed on October 30, 2006.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either

the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D).

The instant petition currently fails to satisfy item (3) above. In this regard, USPTO assignment records demonstrate that an assignment from Quicksilver Technology, Inc. to Techfarm Ventures Management, LLC [hereafter Techfarm] was executed on October 13, 2005, which would have made Techfarm the owner of this application during the period within which a reply could have been timely filed to the August 19, 2005 non-final Office action. The present petition is submitted by counsel for Qst Holdings, LLC [hereafter Qst]. An assignment from Techfarm to Qst was executed on August 31, 2006. Therefore, the record supports the fact that Qst did not obtain the entire right, title, and interest in the instant application until after expiration of the period set in the non-final Office action of August 19, 2005.

When the issue of revival is addressed, the focus must be on the rights of the party or parties as of the date of abandonment. See Kim v. Quigg, 718 F.Supp. 1280, 1284, 12 USPQ 1604, 1607 (E.D. Va. 1989). Petitioner's actions (or intentions) subsequent to expiration of the period for reply are immaterial to the question of the delay during the period that the reply could have been submitted. Id. Techfarm, as the putative owner of the entire interest at the time the reply to the August 19, 2005 Office action fell due, was free to deal with the application as Techfarm willed. See Garfield v. Western Electric Co., 298 F.Supp. 659 (S.D.N.Y. 1924). It follows that it is immaterial to the delay during the time the application was pending that petitioner may have been unaware of, or would have acquiesced to, Techfarm's actions or inactions. Kim, supra. That petitioner, upon its acquisition of its rights in this application, may have acted with dispatch, is immaterial to, and does not overcome, the delay attributable to Techfarms. Id.

Since petitioner herein, Qst, was not the party in interest at the time of expiration of the period for reply to the August 19, 2005 Office action, Qst, or its representative who was not associated with this application during the period within which a reply could have been timely filed, was not in a reasonable position to make the statement of unintentional delay. In the alternative, counsel who executed the statement of unintentional delay may wish to indicate that such statement is or was made after an inquiry into the underlying facts and circumstances surrounding the unintentional delay in filing a timely reply to the Office action of August 13, 2005. See 37 CFR 10.18.

Further correspondence with respect to this matter should be addressed as follows:

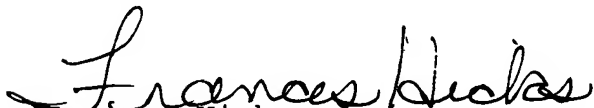
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The centralized facsimile number is (571) 273-8300.

Correspondence regarding this decision may also be filed through the electronic filing system of the USPTO.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3218.


Frances Hicks
Petitions Examiner
Office of Petitions